IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 660 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT O/B OF BHARATKUMAR HARIPRASAD TRIVEDI
Versus
M/S ALPIN INDUSTRIES

Appearance:
1. Criminal Revision Application No. 660 of 1999
MR B.D. DESAI, APP for Petitioner No. 1
MR YN RAVANI for Respondent No. 1-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. Heard ld. APP Mr. Desai for the State and Ld. Counsel Mr. Ravani for the respondents-accused.
2. This appeal is preferred by the State of Gujarat on behalf of Bharatkumar Hariprasad Trivedi- original

complainant - Drug Inspector of the Commissioner of Food & Drugs Control Administration, Mehsana, against the order of discharge recorded by ld. Judicial Magistrate (First Class), Kalol in Criminal Case No. 1679/1996 on 30.6.1999

3. Respondents-accused were prosecuted for the offence punishable under Section 27 of the Drugs & Cosmetics Act (hereinafter referred to as the Act) for violating the provisions of Section 18(A)(i) of the Act. According to complainant, he had drawn sample of Fymacetine Skin Cream, having Batch No. 2590 on 27.3.1995 from the Medical Stores of D/1, Kamdar Rajya Vima Yojna, Kalol, having manufacturing date September 1994 and expiry date August 1996. The Central Medical Stores of Ahmedabad had supplied this medicine to the Medical Stores at Kalol and the said stock was purchased in the month of October, 1994. As per prosecution, cream from which sample was taken, was manufactured by original accused No.1 M/s Alpine Industries, New Delhi. The sample was sent for analysis to Government Analyst, Vadodara. Report of Analyst revealed that sample was found sub-standard and, therefore, complaint was filed.

4. On careful consideration of the facts reflected from the record and order passed by the ld. Magistrate, this Court is of the view that the order passed by the ld. Magistrate discharging the respondents accused, is absolutely in accordance with law and is passed after appreciating the facts in correct perspective.

5. It is on record that on 12.7.1996, report of Govt. Analyst, Vadodara was provided to the accused by Drug Inspector and acknowledgment was also received by the Drug Inspector. In view of the provisions of Section 25(3) of the Act, within 28 days from the date of receipt of report, the accused were supposed to disclose before the Drug Inspector whether they admit the document i.e. report of analyst or not. The accused, vide their letter dated 5.8.1996 had informed the Drug Inspector about not admitting the document reserving their right to adduce evidence in controversion of the report, within the mandatory period of 28 days as stipulated under Section 25(3) of the Act.

6. On 13.8.1996, Drug Inspector acknowledging receipt of the letter from respondents accused, informed them about filing of complaint in the court of Ld. Judicial Magistrate (F.C.), Kalol being Criminal Complaint No. 1679/96 and further informed them that first date of hearing is 6.9.1996. On very first day, i.e. 6.9.1996, respondents accused appeared before the

Court without receiving summons from the process serving agency and moved an application requesting the Court to send sample for analysis by Central Laboratory (CL for short). First application dated 6.9.1996 clearly indicates this aspect. However, ld. Magistrate did not send the sample for second analysis by CL as the period of sample had already expired and it was of no use to send the sample for second analysis.

7. According to ld. APP Mr. Desai, accused have failed in sending the sample to CL well within the time as they were already informed by the complainant about the report of first analysis made by the Govt. Analyst. Ld. APP Mr. Desai, after referring the ratio of the decision of the Apex Court in the case of State of Haryana v/s Brij Lal Mittal and Others, reported in AIR 1998 SC 2327 and principles propounded by the Apex Court in another decision in the case of Amery Pharmaceuticals and another v/s State of Rajasthan, reported in AIR 2001 SC 1303, has fairly accepted that the finding of the ld. Magistrate is legal. This is not a case of extinguishment of the right on the part of the accused. In case of Amery Pharmaceuticals (supra), the Supreme Court has said that:-

"25. In our view the Court should lean to an interpretation as would avert the consequences of depriving an accused of any remedy against such evidence. He must have the right to disprove or controvert the facts stated in such a document at least at the first tier. It is possible to interpret the provisions in such a way as to make a remedy available to him. When so interpreted the position is thus: The conclusiveness meant in Section 25(3) of the Act need be read in juxtaposition with the persons referred to in the sub-section. In other words, if any of the persons who receives a copy of the report of the Government Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Government Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the Government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to any other modes by which such facts can be disproved.

> He can also avail himself of the remedy indicated in sub-section (4) of Section 25 of the Act by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory. Of course, no court is under compulsion to cause the said sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the Court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in Section 25(4) of the Act is produced in the Court the conclusiveness mentioned in that sub-section would become incontrovertible."

8. In the present case, accused have already informed the complainant within mandatory period of 28 days reserving their right to adduce evidence in contravention of earlier report. It was possible for the complainant to pray before the Ld. Magistrate to see that returnable date of summons issued by the ld. Magistrate is at least prior to 31.8.1996. Complainant was aware that accused had demanded, impliedly, to get the sample analysed by CL by the spirit reflected in the letter dated 5.8.1996. It was possible for the complainant to submit before the ld. Magistrate that sample be sent immediately to CL for analysis as returnable date fixed by the ld. Magistrate is after the expiry date of the sample cream. In absence of entitlement to have a sample as per the scheme of the Statute, the second mode provided under Sub-Section 4 of Section 25 of the Act is available to the manufacturer. The complainant had failed in taking proper steps and, therefore, it is rightly held by ld. Magistrate that important right of the accused to get sample reanalysed by CL has been violated. In these set of facts, it was not possible for ld. Magistrate to even frame charge against the accused and, therefore, ld. Magistrate has rightly discharged the accused from the offences under the Act. There is no need to continue fruitless prosecution involving wastage of time of the Court.

9. Mr. Ravani, ld. counsel appearing for the respondents- accused has rightly submitted that this is not a case of handing over of a sample to the accused at the time when sample was drawn, it was not possible for the accused to send the sample directly to the CL for analysis before the self-expiry date. That complainant has deliberately kept silence on this aspect and this has also resulted in to serious prejudice to the accused.

That mandatory provisions has also been violated, and therefore, order passed by ld. Magistrate is absolutely legal. It would be beneficial to refer the decision in the case of The State of Punjab v/s National Organic Chemical Industries Ltd., reported in JT 1996(10) SC 480. The Apex Court was dealing with a case under Insecticides Act, 1968. In reference to Section 24 and the Scheme of Sub-Sections 3, 4 & 5 of Section 22 of the said Act, the Court observed that :-

" Thus, it would be clear that after inspection and seizure of the insecticide, the Insecticide Inspector shall divide the insecticide into three portions, as contemplated and in the manner prescribed and deliver one such sample to the manufacturer, or person from whom insecticide was taken. One should be sent to the Insecticide Analyst. After the receipt of the report, the accused would be notified of the result of the report. Thereafter, the complaint is required to be lodged in the Court. At that stage, two options are open to the accused. The accused is entitled to have one copy of the sample entrusted to him to have it notified to the Court for proving to the contrary to the conclusive evidence of the report of the analyst; after such a notification having been given to the Court, he is entitled to have it tested by Central Insecticide Laboratory and adduce evidence of the report so given. That such certificate by the Director of CIL has a proof of his defence to dislodge the conclusiveness attached to the report of the Insecticide Analyst under sub-section (3) of Section 24. The other option is, after the complaint is laid in the Court, the copy of the sample that is lodged with the Court by the Insecticides Inspector, would be requested to be sent by the Court to CIL and the report thus given by the Director of CIL shall be conclusive evidence as to the quality, consent and facts stated therein."

Legislative intent is very similar to the Drugs & Cosmetics Act.

10. On perusal of the papers, this Court is in full agreement with the submission of ld. counsel Mr. Ravani that no error has been committed by the ld. Magistrate.

11. For the reasons aforesaid, there is no merits in this Criminal Revision Application and the same is hereby dismissed. Impugned order dated 30.6.1999 passed by ld.

Judicial Magistrate (F.C.), Kalol in Criminal Case No. 1679/96 discharging the respondents accused from the offences punishable under Section 27 of the Act, is hereby confirmed. Rule discharged. Yadi to concerned court.

12.4.2002 [C.K. BUCH, J]
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